

## **GUIDELINES FOR EFFECTIVE NARRATIVE REPORT WRITING**

There are many reasons why you may need your written report. It may be required in litigation or to assess in settlement of a case. Your report is your signature and may be used as evidence for summary judgment or in deliberations by the jury.

Your report should be well written, as it may become part of the writer's record and could affect your credibility in the future. Under Federal Rule 26, reports must contain the following information:

1. A statement of opinions to be expressed
2. Basis and reason for the experts opinion
3. Exhibits used to support and summarize the experts opinion
4. All information considered in forming an opinion
5. Expert's qualifications, important in Daubert Rule 702 challenges.
6. Published articles by the expert
7. Compensation being paid for the experts testimony
8. Any other cases the expert may have testified in.

Always work with your attorney, but don't be influenced by your counsel as to your findings, and opinions in your report. Always ask if a report is being requested and how your report will be used. Make sure your conclusions in your report are solid and based upon fact. Your report must have the ability to persuade anyone who reads it. Make your report easy to read and flow properly. Formatting your report is essential and should include:

1. Use a cover page
2. Usually a 12 point font
3. Use topic headings to break up a report for easy reading
4. Use double space for easy reading
5. Number each page
6. Use a summary at the beginning of your report in the form of an affidavit signed by the person writing the report.
7. Carefully proof your report

Document your report by listing all documents used to write your report. List them in chronological order or in some format that is logical and easy to follow. Each document should be described precisely using a descriptive format. Included in your document, you might want to attach your CV, which lists your qualifications as required under Federal Rule 26(a)(2)(B).

Never over or understate your qualifications. Be 100% accurate as each item in your CV as it may be challenged by opposing counsel to attack your credibility.

Always express factual assumptions upon which you based your opinion on. This forms the foundation of your opinion and should be stated in your report. Describe factual assumptions in detail, citing the source of your factual assumptions. Never guess about your assumptions and don't assume they are right. Verify your facts before you write them.

When expressing an opinion, the expert should stay within their scope of expertise. Not doing this may open your testimony to vigorous cross-examination. Use terms within your expertise that you know what they mean. Keep reports simple and don't use legal language in your narrative. Experts are like lay persons, with one exception, the expert can state an opinion. Your opinion must be defensible. State your opinion clearly to relay your opinion to a person that may not have your expertise. Don't use words like; "it seems", "I think" as these are hedge words and don't relay confidence of the expert. Do your research before you write your report. and support your opinion. Stating your authority will give you a better chance to survive a Daubert challenge.

When writing your report, state items clearly. Don't speculate or guess, especially on cost items. Don't use boilerplate report formats. Use an active voice format, confident, not argumentative language. Objectively support your findings and conclusions. Don't use language that is superfluous as this is one of the most common mistakes and leads to cross-examination that can damage your credibility. Remember the opposing counsel may use your report to destroy the expert, and your credibility.

Experts should assume that everything they write would be discoverable in any type of litigation. The expert is not the attorney's client and the attorney-client privilege does not protect what is said between the expert and the attorney who retains him.

Your work product privilege protects documents and other things in preparation for trial. Work privilege is discoverable only upon a showing of need and the need will depend upon the type of material sought, fact or opinion.

Things that an expert considers when forming an opinion are discoverable. Documents reviewed by non-testifying experts receive more protection than those reviewed by testifying experts. Factual information provided by an attorney to a testifying expert is discoverable. Information and opinions provided by a testifying expert are not protected by the work product doctrine. Some courts are split in this as to the discoverability of opinion work product, sometimes called core work product. This includes impressions, conclusions, opinions, and legal theories. On the other side work product materials related to matters about what the expert will testify to are discoverable and include written or oral communications.

Oral and draft reports are usually discoverable. Do not hide, destroy draft reports with the idea to prevent discovery. If done, may have serious credibility consequences for you and may be used to impeach your testimony. If draft reports are prepared, they should only be discarded as usual business practices and not in an attempt to hide them from discovery. Try to avoid draft reports all together.

Expert reports need to be written and comply with legal standards and law. If you do not comply with legal standard, you may not be able to testify. Make sure your reports comply with all legal requirements under Federal Rule 26(a)(2)(B).

1. Easy to read format
2. Written
3. Signed by the expert
4. Opinion of the expert
5. Basis and reasons for the experts opinions
6. Any exhibits that support the experts opinions
7. Qualifications of the expert
8. Any publications by the expert for last 10 years
9. Experts compensation for his testimony
10. Listing of all cases the expert has testified in.
11. Report must be detailed and complete

Expert reports are sometimes used to support or oppose summary judgments. When used for this there are legal requirements.

The report must address the key factual disputes as determined by the judge. Report needs to be signed by the expert. The report needs to be prepared and signed in a timely fashion. When an expert witness report is not filed in a timely fashion, the report may be stricken, the case can be dismissed or the summary judgment may be granted against the attorney's his client. The courts, based upon rules of civil procedure, usually set the deadline for when documents are to be filed. Each state has their respective requirements for complying with applicable standards or requirements.

When preparing your reports, formatting is very important. Reports should be easy to read and flow logically.

- Use a cover page
- 12 point font
- Use topic heading to break up report
- Use short and concise paragraphs
- Use 1.5 spacing
- Number your pages
- Use an executive summary at the beginning of your report
- Sign your reports

Cover page will show you are a methodical person and make it look like it was carefully drafted. This will go a long way in your credibility. Example:

## MALPRACTICE REVIEW

WHO IT'S FOR:

SUBMITTED TO:

REFERENCE OR PERTAINING TO:

PREPARED BY:

DATE PREPARED:

Headings break up your report, which makes it easier to read and find what you are looking for.

Use short, concise paragraphs, which make it easy to read and understand. Using 1.5 lines makes the report easy to read. It also can help in making the report seem longer and more impressive.

Number your pages and should list the page number and total number of pages (e.g. page 5 Of 10). Failure to number your pages can make a report look unprofessional and sloppy.

Include an executive summary, especially when the reports are lengthy. This summary should include a brief summary of your conclusions with supporting documents. This section is more likely to be read by person the report is directed to. The executive summary can help communicate the expert's opinion to the reader. This is a summary that is part of a well-written report. Your written report should persuade, and educate the reader in an easy to read report that is properly formatted.

It is important to organize and properly list all your documents and other materials that you reviewed in your report. This ensures you account for all your material you reviewed and allows for a quick review. Your documents should be numbered and listed alphabetically or chronologically. Avoid such words as: including, including but limited to, relevant portions of. This may imply to counsel that some documents you reviewed were not listed and could open questioning as the possibility of intentional omissions. This may lead to a loss of credibility. The question as to how thorough and precise you were in reviewing the documents may come into question. The more thorough your reports is, the more credible your opinions and conclusions will be. Failure to review your documents may result in your opinion being reduced or stricken entirely. It is recommended that you number the documents reviewed, (1-10) etc. This will appear that the expert carefully drafted his report. Always review all your documents thoroughly and list them in chronological order some other logical way to identify what you reviewed.

The experts most often include some descriptive way to relay their qualifications to the reader. Federal Rule Civil Procedure Rule 26(a)(2)(B) requires the expert to list his qualifications Reports that fail to do so may exclude the expert from testifying. The easiest way to list your qualifications is to attach you resume (cv) to the report. This would be for reports used in litigation, and not reports you would send to insurance companies.

Do not use words that will raise red flags, as this will lead to an attack on your credibility, opinions and conclusions.

1. Authoritative: Has legal significance and will lead to cross-examination about everything in the text.
2. Legal or Legally: These terms are outside the experts expertise unless you are an attorney
3. Draft: Alerts counsel to the existence of a draft report and grounds for cross-examination. Remember, your job is to limit cross-examination by writing a good report.
4. Work Product, Confidential or Privileged: It makes it look like the expert is trying to hide something
5. Probable, Possible, Substantial: These words are ambiguous
6. Obviously, Clearly: Looks like the expert is presumptive
7. Appears, Presumes, Supposedly, Is Said, Evidently: Imply uncertainty
8. He, She, It, They: Uncertain words and not proper nouns
9. We: Makes the expert look silly, pompous and even dishonest. There is only one person forming your opinion
10. It seems, Could, Apparently, I Believe: Are not confident words.
11. Complete, Through, Exhaustive: Self-serving words that will hold the expert to the highest standards and are not persuasive words to use in a report.
12. Clearly, Obviously: May give the appearance of overconfident or arrogant and appear to look like the expert as an advocate. These words add no meaning to your report.

Experts should carefully proof read their reports for any mistakes. Mistakes lessen your credibility. The argument from opposing counsel is, one mistake there must be others and if so your entire report becomes suspect. Some common mistakes are:

1. Any substantive mistakes
2. Bad grammar
3. Typographical errors
4. Misspelled words

Substantive mistakes include mistakes that result in your report or testimony being excluded and may effect your credibility. Have some one else proof your report for errors.

Your reports should be powerful, persuasive, easy to read and understandable. Write your reports clearly and directly and don't guess about your opinions or conclusions, it hurts your credibility and reliability. Your report should be well written, follow a good format and easy to follow by everyone who reads it. Make your report easy to defend.

To command respect and maintain your credibility, your reports must be well-written, correct grammar used, properly spelled and contain well-established factual information. To receive a free copy of "Guidelines For Writing Effective Narrative Reports" call Dr. Ross, toll free 407-875-2000 or visit his website at [www.drkross.com](http://www.drkross.com).